

1977 December 22

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

ANDREAS COSTA IOANNOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3840*).

*Criminal Law—Sentence—Causing death by want of precaution—
Section 210 of the Criminal Code, Cap. 154—Six months' im-
prisonment and twelve months' disqualification—Prevalence of
offence—Sentence not wrong in principle—Insufficiency of the
5 material on record—Not possible to say with certainty that this
is not, more or less, a border line case between offence under s.
210 and less serious offence of careless driving—Sentence of
imprisonment and disqualification reduced.*

10 The appellant pleaded guilty to the offence of causing death by
want of precaution and was sentenced to six months' im-
prisonment and was disqualified from holding or obtaining a driving
licence for a period of twelve months. There was no clear
indication in the record as regards the speed of appellant's car
at the time and how exactly the accident happened.

15 Upon appeal against sentence:

Held, (1) we do agree with the trial Judge that cases of causing
death by want of precaution are prevalent and, so, we do not
regard the sentence of imprisonment and the disqualification
order as being wrong in principle.

20 (2) As due to insufficiency of the material on record it is
not possible to say with certainty that this is not, more or less
a border line case between the offence under s. 210 of Cap.
154, and the less serious offence of driving without due care
and attention, contrary to section 8 of Law 86/72, this is a

proper case in which to interfere and reduce the sentence of imprisonment to one of three months and the disqualification order to six months.

Appeal allowed.

Appeal against sentence.

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Appeal against sentence by Andreas Costa Ioannou who was convicted on the 26th November, 1977 at the District Court of Nicosia (Criminal Case No. 7086/76) on one count of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154, as amended by section 5 of the Criminal Code (Amendment) Law, 1972, (Law 92/72) and was sentenced by Michaelides, D.J. to six months' imprisonment and was disqualified from holding or obtaining a driving licence for twelve months.

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Appellant appeared in person.

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Gl. Michaelides, for the respondents.

The following judgment was delivered by:

TRIANTAFYLLIDES P.: The appellant has appealed against the sentence of six months' imprisonment and of disqualification for twelve months from holding or obtaining a driving licence (under section 19 of the Motor Vehicles and Road Traffic Law, 1972, Law 86/72) which was imposed on him on November 26, 1977, after he had pleaded guilty to the offence of having caused death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154, as amended by section 5 of the Criminal Code (Amendment) Law, 1972 (Law 92/72).

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The victim was a young girl, nine years old, and she was knocked down, in mid August, at about 7 p.m., in a road where there was good visibility and ample lighting.

We do agree with the learned trial Judge that cases of causing death by want of precaution are prevalent and, so, we do not regard the sentence of imprisonment and the disqualification order as being wrong in principle.

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We are rather worried, however, because, due to the insufficiency of the material on record, it is not possible to say with certainty that this is not, more or less, a border line case between the offence under section 210 of Cap. 154, and the

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less serious offence of driving without due care and attention, contrary to section 8 of Law 86/72. There is, unfortunately, no clear indication in the record as regards the speed at which the appellant was driving at the time and how exactly the
5 accident happened; and it was stated, in mitigation, before the trial Court, that the appellant's car hit the victim because while she was walking along the edge of the road she suddenly moved towards the centre of the road with the result that she struck the front right side of the car.

10 In the circumstances, we feel that this is a proper case in which to interfere in favour of the appellant; we, therefore, reduce the sentence of imprisonment to one for three months and the duration of the disqualification order is reduced to six months.

15 This appeal is, thus, allowed accordingly.

Appeal allowed.